

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS

Civil Action No. 05-CV-10879-JLT

KIMBERLY GENEREUX,	)	
Plaintiff	)	
	)	
v.	)	
	)	
COLUMBIA SUSSEX CORPORATION,	)	
STARWOOD HOTELS & RESORTS	)	
WORLDWIDE, INC., and	)	
WESTIN HOTEL MANAGEMENT, L.P.,	)	
Defendants	)	

**PLAINTIFF'S MOTION TO STRIKE  
PORTIONS OF THE AFFIDAVIT OF  
JOHN MCGOVERN IN SUPPORT OF  
DEFENDANTS' MOTION FOR  
SUMMARY JUDGMENT  
DUE TO IMPROPER ARGUMENT,  
OPINION, AND CONTRADICTION  
OF DEPOSITION TESTIMONY**

Pursuant to Fed. R. Civ. P. 56(e), the plaintiff, Kimberly Genereux, hereby moves this Court to strike paragraphs 20 and 21 of the affidavit of John McGovern, which was filed in support of the defendants' motion for summary judgment, for the following reasons:

1. The witness has proffered non-expert opinion testimony concerning the foreseeability of the attack upon Ms. Genereux, an issue of fact to be determined by the jury, in paragraph 21, in violation of Fed. R. Evid. 701.

2. The witness has offered affidavit testimony designed to and in contradiction of his deposition testimony in paragraph 20, in violation of *Camerlin v. New York Central R. Co.*, 199 F.2d 698, 701 (1<sup>st</sup> Cir. 1952). See also *Reisner v. General Motors Corp.*, 671 F.2d 91, 93 (2d Cir.), cert. denied, 459 U.S. 858, 103 S.Ct. 130, 74 L.Ed.2d 112 (1982). Contradictory deposition testimony appears at the pages 225-26, and 231-32 of the transcript, which has been filed separately.

For all of the above reasons, this Court should strike and disregard the cited paragraphs of the affidavit.

Respectfully submitted,  
By her Attorney,

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March 26, 2008

**CERTIFICATE OF SERVICE**

I, Mark F. Itzkowitz, counsel for the plaintiff, hereby certify that on this date, I made service of the within document by serving it electronically to registered ECF participants and/or by mailing/faxing/hand-delivering a copy of same to non-registered ECF participants as indicated on the Notice of Electronic Filing ("NEF"), upon the following counsel of record:

John B. Johnson, Esquire  
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/s/ Mark F. Itzkowitz  
MARK F. ITZKOWITZ (BBO #248130)

Dated: March 26, 2008